

1 Petitioner's application to proceed in forma pauperis, and allows Petitioner to prosecute the
2 above-referenced action as a poor person without being required to prepay fees or costs and
3 without being required to post security.

4 However, a review of the First Amended Petition indicates that Petitioner has once again
5 failed to allege exhaustion of his state court remedies. Rather, Petitioner cites Hill v. Alaska,
6 297 F.3d 895 (9th Cir. 2002) as permitting him to avoid the exhaustion requirement. (Pet. at 6-
7 9.) The Ninth Circuit in Hill held that a federal habeas petition from a state prisoner challenging
8 the calculation of his release date by prison officials, as Petitioner here is doing, is neither
9 "second" nor "successive" to that prisoner's initial federal habeas petition challenging his
10 conviction, as those terms are used in 28 U.S.C. § 2244(b), which proscribes the filing of second
11 or successive petitions unless certain conditions are met. Hill, 297 F.3d at 898. However,
12 nothing in Hill authorizes Petitioner to avoid the exhaustion requirement.

13 As Petitioner was instructed in the previous Order of dismissal, "habeas petitioners who
14 wish to challenge either their state court conviction or the length of their confinement in state
15 prison, must first exhaust state judicial remedies. . . [by presenting] the California Supreme
16 Court with a fair opportunity to rule on the merits of every issue raised in his or her federal
17 habeas petition." (4/21/08 order at p. 2, citing 28 U.S.C. § 2254(b)-(c) and Granberry v. Greer,
18 481 U.S. 129, 133-34 (1987).) Petitioner was instructed that: "If state courts are to be given the
19 opportunity to correct alleged violations of prisoners' federal rights, they must surely be alerted
20 to the fact that the prisoners are asserting claims under the United States Constitution." (4/21/08
21 Order at p.2, citing Duncan v. Henry, 513 U.S. 364, 365-66 (1995).) The Court dismissed the
22 original Petition after finding that Petitioner had failed to allege that he had presented his claims
23 to the California Supreme Court, and granted Petitioner leave to file an amended petition curing
24 this pleading defect. (Id. at 4.) Petitioner has specifically indicated that he has not presented his
25 claims to the California Supreme Court. (See Pet. at 6-9.)

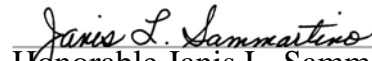
26 Because Petitioner has failed to allege exhaustion of state court remedies, the First
27 Amended Petition is **DISMISSED** without prejudice. The Court will grant Petitioner one further
28 opportunity to amend his Petition to cure this pleading defect.

CONCLUSION AND ORDER

Petitioner's Motion to proceed in forma pauperis is **GRANTED** and the First Amended Petition is **DISMISSED** for failure to allege exhaustion of state court remedies. If Petitioner wishes to proceed with this action, he must file, on or before **June 16, 2008**, a Second Amended Petition in which he alleges exhaustion of state court remedies. If Petitioner has failed to allege exhaustion of state court remedies by June 16, 2008 and still wishes to proceed with his claims, he will be required to file a new petition which will be given a new civil case number.

IT IS SO ORDERED.

DATED: May 29, 2008



Honorable Janis L. Sammartino
United States District Judge